



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 10, 2003

Mr. John Feldt
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2003-2418

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179169.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for all police reports and final judgments concerning two specified cause numbers. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that all of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). In this instance, the submitted information consists of a completed investigation made of, for, or by a governmental body and information that is also contained in public court records. The information that relates to the completed investigation must be released under section 552.022(a)(1) unless the information is excepted from public disclosure under section 552.108 or expressly confidential under other law. The information that is also contained in public court records must be released under section 552.022(a)(17) unless the information is expressly confidential under other law. Sections 552.107, 552.108, and 552.111 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. As such, these exceptions are not other law that makes information confidential for the purposes of section 552.022. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive section 552.107(1)). 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the district attorney may not withhold the information that relates to the completed investigation under sections 552.107(1) or 552.111. Likewise, the district attorney may not withhold the information that is also contained in public court records under section 552.108.

You also claim that Exhibits C and E are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The district attorney raises section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We agree that the information submitted as Exhibits C and E consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code or in providing services as a result of an investigation. *See also* Open Records Decision No. 440 at 2 (1986) (construing

predecessor statute). You do not inform this office of any rule adopted by the district attorney that would allow the release of Exhibits C or E in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that Exhibits C and E are excepted from disclosure in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.

We note that Exhibits D and F contain thumbprints. The disclosure of this information is governed by sections 559.001, 559.002, and 559.003 of the Government Code. These sections provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 559.001, .002, .003. Unless the district attorney is authorized to disclose the thumbprints in Exhibits D and F under section 559.002, the district attorney must withhold the thumbprints under section 552.101 of the Government Code in conjunction with section 559.003 of the Government Code.

Exhibit F also contains a Texas driver's license number. Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The district attorney must withhold the Texas driver's license number in Exhibit F under section 552.130.

In summary, the district attorney must withhold Exhibits C and E under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district attorney must withhold the thumbprints in Exhibits D and F under section 552.101 of the Government Code in conjunction with section 559.003 of the Government Code unless he is authorized to disclose the thumbprints under section 559.002. He must also withhold the Texas driver's license number in Exhibit F under section 552.130 of the Government Code. The rest of the information in Exhibits D and F must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

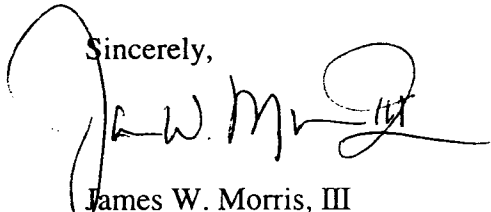
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 179169

Enc: Submitted documents

c: Ms. Jerris Penrod
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(w/o enclosures)